

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS**

**TYLER DIVISION**

**DATE:** 4/21/10

**JUDGE**  
**JOHN LOVE**

**REPORTER:** Keith Johnson  
**LAW CLERK:** Mark Deming

<b>FENNER INVESTMENTS, LTD.</b> <b>Plaintiff</b>  <b>vs.</b>  <b>HEWLETT-PACKARD COMPANY, ET AL</b> <b>Defendant</b>	<b>CIVIL ACTION NO: 6:08cv273</b>   <b>PRETRIAL HEARING</b>
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<b>ATTORNEY FOR PLAINTIFF</b>	<b>ATTORNEY FOR DEFENDANT</b>
Anthony Downs Lana Shiferman Ginger Mimier Mark Abate Ron Pabis	Corey Weinstein Jim Flegle Peter Thoma Jared Bobrow Jennifer Ainsworth Mike Smith Mike Newton

On this day, came the parties by their attorneys and the following proceedings were had:

**OPEN:** 9:07 am

**ADJOURN:** 2:24 pm

<b>TIME:</b>	<b>MINUTES:</b>
9:07 am	Case called. Parties announced ready.
9:08 am	The Court greeted the parties and stated we are here for a pretrial. The Court would like to cover motions in limine, exhibit and deposition objections. The Court would like to get everything resolved today. The Court will get rulings or have deferrals. The Court will conclude our pretrial today. Judge Davis would like to visit with the parties after hearing.
9:09 am	Mr. Flegle responded.
9:09 am	Mr. Pabis discussed the motion for summary judgment and motion to strike still pending. After the motions in limine are decided, that may take care of some things.

**DAVID J. MALAND, CLERK**

**FILED:** 4/21/10

BY: *Mechele Morris*, Courtroom Deputy

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<b>TIME:</b>	<b>MINUTES:</b>
9:10 am	Mr. Downs stated that plaintiff's Motion in Limine #205 can be ressolved.
	The Court will grant plaintiff's Motion in Limine #205.
9:12 am	Mr. Flegle stated they will withdraw plaintiff's Motion in Limine #206.
9:13 am	Mr. Flegle began argument on plaintiff's Motion in Limine #207.
9:14 am	Mr. Pabis responded and argued motion on behalf of the defendants. Discussion made on the 8 agreements. Dell is 8 <sup>th</sup> in market share for switches.
9:21 am	Mr. Flegle further argued motion #207. Mr. Pabis responded. Mr. Downs responded. Parties continue to argue motion. Parties discuss the Rescue Net case.
9:40 am	The Court will move on from this motion.
9:40 am	Mr. Flegle stated the pending Motion in Limine #217 regarding precluding testimony from James Mawrocki needs to be addressed.
9:41 am	Mr. Pabis made argument on motion #217 on behalf of the defendants.
9:42 am	Mr. Flegle made argument on motion on behalf of the plaintiff.
9:45 am	Mr. Pabis continued argument on motion.
9:49 am	The Court will look into this motion but is leaning towards denying the motion. The Court will move to defendants motions now.
9:49 am	Ms. Shiferman began argument on defendants Motion in Limine #208.
9:51 am	Mr. Flegle made argument on motion #208 on behalf of the plaintiff.
9:53 am	The Court granted the motion 1 in #208 as instructed.
9:54 am	Mr. Flegle responded. Ms. Shiferman responded. Mr. Flegle further responded.
9:58 am	After further argument, issues on motions should be taken up at trial. The Court withdraws the granting of #1.
10:01 am	Mr. Downs responded.
10:02 am	Mr. Flegle made argument on motion #2.
10:03 am	Mr. Newton made argument on motion #2. Mr. Flegle responded.
10:04 am	The Court granted motion #3.
10:04 am	Mr. Flegle began argument on motion #3.
10:05 am	Ms. Shiferman made argument on behalf of the defendants.
10:06 am	Mr. Flegle responded and made further arguments. Ms. Shiferman responded.
10:09 am	The Court granted motion #3 as directed.
10:09 am	Mr. Flegle responded. Ms. Shiferman responded.

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<b>TIME:</b>	<b>MINUTES:</b>
10:10 am	Mr. Downs began argument on motion #4 on behalf of the defendants.
10:12 am	Mr. Flegle made argument on motion #4 on behalf of the plaintiff.
10:14 am	Mr. Downs responded and further argued motion.
10:15 am	The Court denied motion #4.
10:15 am	Mr. Newton argued motion #5 on behalf of the defendant.
10:16 am	Mr. Flegle made argument on motion on behalf of the plaintiff. Mr. Newton responded. Mr. Flegle responded. Parties further respond.
10:22 am	The Court will have to see reports.
10:23 am	Mr. Flegle responded.
10:23 am	The Court will grant motion #5 as directed.
10:24 am	Ms. Shiferman argued motion #6 on behalf of the defendants.
10:26 am	Mr. Flegle argued motion on behalf of the plaintiff.
10:30 am	Ms. Shiferman responded. Mr. Flegle responded.
10:31 am	The Court will defer ruling on #6.
10:31 am	Ms. Shiferman argued motion #7 on behalf of the defendants.
10:32 am	Mr. Flegle responded and argued motion #7 on behalf of the plaintiff.
10:34 am	The Court will defer ruling on #7 as well.
10:34 am	Recess for 10 minutes.
11:07 am	The Court will now here motion #8.
11:07 am	Mr. Flegle began argument on motion #8.
11:09 am	Mr. Pabis responded and argued motion on behalf of the defendants.
11:11 am	Mr. Flegle continued arguments on motion.
11:13 am	Mr. Pabis further responded. Mr. Flegle further responded. Parties continue argument on motion.
11:20 am	The Court will defer a ruling on #8.
11:20 am	The Court granted #9 as agreed.
11:20 am	Mr. Flegle began argument on motion #10 on behalf of the plaintiff.
11:21 am	Ms. Shiferman made argument on motion on behalf of the defendants.
11:23 am	Mr. Bobrow made argument on motion.
11:25 am	Mr. Flegle responded.

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<b>TIME:</b>	<b>MINUTES:</b>
11:25 am	The Court granted motion #10 as to Dell as directed.
11:29 am	The Court will defer ruling on #10 as to Hewlett Packard..
11:29 am	Mr. Bobrow argued motion #11 on behalf of the defendants.
11:33 am	Mr. Flegle responded.
11:35 am	Ms. Shiferman responded and argued motion #11.
11:36 am	Mr. Flegle further responded.
11:38 am	The Court will defer ruling on #11.
11:38 am	Mr. Downs began argument on motion #12 on behalf of the defendants'
11:40 am	Mr. Flegle responded and argued motion.
11:42 am	Mr. Downs responded.
11:42 am	The Court denied motion #12.
11:42 am	Mr. Newton argued motion #13.
11:44 am	Mr. Flegle responded and argued motion #13 on behalf of the plaintiff.
11:45 am	Mr. Newton responded.
11:46 am	The Court denied motion #13.
11:47 am	Mr. Bobrow began argument on motion #14.
11:47 am	Mr. Flegle responded and argued motion.
11:48 am	Ms. Shiferman responded and argued motion.
11:49 am	The Court granted #14 as directed. Court granted #15 as agreed, Court denied #16 as directed.
11:51 am	Mr. Abate responded. Mr. Flegle responded.
11:54 am	Mr. Abate further responded and made argument on motion #16.
12:05 pm	The Court denied motion #16.
12:06 pm	Ms. Ainsworth asked about motion #5.
12:06 pm	The Court will have to see what the supplemental report looks like. To make things clear, the Court denied #1, 2 and 3 are granted, 4 has been denied, deferred on 5. 6, 7, 8, 9 is granted as agreed. 10 is granted as to Dell but deferred as to HP at this time. 11 is granted at this time, but again deferred as to HP. 12 is denied, 13 is denied, 14 is granted, 15 is granted as agreed, 16 is denied, but will hear as much as we can, discrete issues today.
12:07 pm	Ms. Weinstein responded.
12:08 pm	Recess until 1:15.

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<b>TIME:</b>	<b>MINUTES:</b>
1:25 pm	Court resumed. The Court would like to go back to plaintiff's motion #217. The Court is going to deny the Motion in Limine. The Court is deferring on motion #5, granting in part as to the second issue. The Court asked parties about #8.
1:27 pm	Mr. Flegle responded.
1:28 pm	The Court denied #8 as directed.
1:30 pm	Mr. Flegle responded. Mr. Pabis responded.
1:32 pm	Mr. Thoma began argument on Motion to Strike #158 and Defendants Motion in Limine #16.
1:41 pm	Mr. Abate responded and argued motions.
1:49 pm	The Court is not going to rule on this at this point. Court orders Mr. Thoma that whatever he has on the testing, to produce to defendants.
1:51 pm	Mr. Abate responded. Mr. Thoma responded.
1:52 pm	The Court will move on to #17.
1:52 pm	Mr. Flegle argued motion #17 on behalf of the plaintiff.
1:53 pm	The Court granted #17, 18, 19, 21-24 are agreed.
1:53 pm	Mr. Flegle argued motion #20.
1:55 pm	Ms. Shiferman responded and argued motion.
1:56 pm	The Court granted #20 as instructed.
1:57 pm	The Court will take up objections to exhibits.
1:58 pm	Mr. Flegle will withdraw a good amount of exhibits. He believe that most of the objections can be worked out prior to trial.
1:59 pm	Ms. Shiferman responded and discussed objections. She believes that the parties can work through them.
2:00 pm	The Court does not want to have breaking at trial to address the objections. The Court asked parties what they would like to do.
2:00 pm	Mr. Flegle responded.
2:01 pm	Ms. Shiferman further discussed exhibits and their possible objections. Mr. Flegle further responded.
2:04 pm	The Court directed parties to discuss objections and make sure each parties has what they want to use as exhibits, to have on their own list, not the other parties list.
2:05 pm	Ms. Shiferman responded and stated these issues can be resolved. Mr. Flegle stated they could work together and get back with the Court if there are any big objections left.
2:07 pm	The Court stated we could tentatively set another hearing on May 6 at 2:00 after jury selection. By May 3, file any revised objections and revised exhibit lists.

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<b>TIME:</b>	<b>MINUTES:</b>
2:08 pm	The Court where the parties are on depositions.
2:08 pm	Mr. Flegle responded. Some of the objections are resolved.
2:09 pm	Ms. Shiferman responded.
	Mr. Flegle stated they are not offered Shaw or Weber.
2:10 pm	Ms. Shiferman responded. Most of the objections can be resolved between the parties.
2:10 pm	Mr. Pabis responded and stated after today's hearing, the parties could resolve a lot of the issues.
2:11 pm	Mr. Newton discussed Mr. Revel's testimony designations.
2:11 pm	Mr. Flegle responded.
2:12 pm	Ms. Shiferman discussed Mr. Gillespie's testimony designations.
2:14 pm	The Court will provide an opportunity for these objections to be brought to the May 6 hearing after agreements and withdrawals are done.
2:15 pm	Mr. Flegle asked how the designations are played. Ms. Shiferman responded. Mr. Pabis responded.
2:17 pm	The Court asked parties to take up with Judge Davis as to how he would like video depositions played, whether it be by issue or beginning to end.
2:18 pm	Mr. Downs asked if the Court's trial practice is different in any way.
2:19 pm	The Court discussed having 8 jurors, how many strikes. The Court plays the patent video after the jury is picked. Beyond that, he is not sure.
2:21 pm	Mr. Downs asked if it effects the timing of the trial.
2:21 pm	The Court can give jury selection on the 6 <sup>th</sup> or 7 <sup>th</sup> and trial on the 10 <sup>th</sup> .
2:22 pm	Mr. Flegle asked if attorneys can walk freely with questioning.
2:23 pm	The Court responded.
2:23 pm	Ms. Ainsworth asked if jury selections would be in this courtroom.
2:23 pm	The Court stated "yes".
2:24 pm	There being nothing further, Court is adjourned.